

IN THE HIGH COURT OF SINDH KARACHI

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Adnan-ul-Karim Memon

Constitutional Petition No.D-1986 of 2020

Inayat Hussain
Petitioner through : Mr. Qaim Ali Memon, advocate along with
petitioner

Respondents
through : Syed Hussain Shah, AAG

Date of hearing
& order : **22.04.2022**

ORDER

Through the captioned Constitutional Petition, the petitioner is seeking the appointment to the ministerial post based on the quota reserved for civil servants who during their service were declared Invalidated on medical grounds in terms of Rule 11-A of Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974.

2. The grievance of the petitioner is that his father was a Primary School Teacher in Education Department, Government of Sindh and stood retired from Government service on medical grounds vide office order dated 15.02.1996; and, passed away in the year 2002 for which petitioner had moved an application in the year 2015, when he became adult, for appointment on quota reserved under Rule 11-A supra, before the worthy Chief Minister Sindh, however, the respondent Education Department has declined the request of the petitioner verbally on the premise that the applicant did not apply within the stipulated period of two years after the death of his father. It is, inter alia, contended on behalf of the petitioner that the Respondents are discriminating the Petitioner in violation of Rule 11-A of Sindh Civil Servants (Appointment, Promotion and Transfer) Rules 1974 ; learned counsel further added that Petitioner is entitled to be appointed to the ministerial post on the basis of quota reserved for the civil servants who were declared invalidate on medical grounds; that the Petitioner has been seriously prejudiced and not treated equally, therefore, the Petitioner is entitled to be treated equally in accordance with law, as provided under Articles 4 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 ; that grave injustice has been done with the Petitioner with no fault on his part by depriving him for his appointment to the ministerial post, for which he is fit and qualified ; that due to such acts and deeds of the Respondents, the Petitioner has suffered a lot of mental torture, agonies and by such situation, the Petitioner is facing problems too ; that the denial in this regard by the Respondents amounts to invade upon and infringement of fundamental and

legal rights of the Petitioner as guaranteed by the Constitution of Islamic Republic of Pakistan 1973, which are enforceable by this Court in exercise of its Constitutional jurisdiction ; that the Petitioner has been continuously approaching personally to the Competent Authority of respective department to appoint him for any suitable post on the basis of deceased Quota / policy in vogue, but nothing has been done so far; that the Petitioner is aggrieved by the illegal action of the Respondents. In support of his contentions, he heavily relied upon the cases of Shafqat Ali v. Government of Sindh through Chief Secretary and 03 others, **2010 PLC (CS) 536**, Ayaz Ali and others versus the Government of Sindh & 67 others **2014 PLC (C.S.) 1060** and Mir Hassan v. Province of Sindh through Secretary and 03 others, **2017 PLC (CS) 864** and argued that the case of the petitioner is akin to the decision referred to hereinabove; therefore, he may be treated accordingly. He lastly prayed for allowing the instant Petition.

3. We put the question to the learned AAG as to why the petitioner has not been considered for the subject post against the quota reserved for employees who were declared invalidate on medical grounds during their tenure of service. He replied that his father had passed away in the year 2002 and he did not apply within two years from the death of his father. He further submitted that as far as his application dated 18.03.2020 is concerned, the same is after the lapse of considerable time, thus his case does not fall within the ambit of the policy decision of the Government of Sindh as enshrined under Rule 11A supra. We do not agree with the contention of learned AAG on the aforesaid proposition as Rule 11-A as discussed supra, is clear in its terms and needs no further deliberation.

4. Prima facie, the action of the respondent does not align with the law laid down by the Hon'ble Supreme Court of Pakistan on the subject issue and the petitioner has been discriminated. The respondents have failed and neglected to look into the matter at the time of the death of his father, he was a minor boy and he attained majority in the year 2015 and as per record, he moved the application for appointment and second application on 18.03.2020 under Rule 11A for the aforesaid purpose. This plea of the respondent is not tenable and they were required to decide the application of the petitioner in time, merely saying that the petitioner's case is not covered under the deceased quota policy is not sufficient to absolve them from their basic duty assigned to them under the Constitution and law on the subject. Besides the above, the plea of learned A.A.G. is also not tenable in the light of the latest verdict of the Honorable Supreme Court given on 10.08.2016 in C.P. No. 482-503-K of 2016.

5. This petition is, therefore, allowed along with the pending application(s) with direction to the Chief Secretary, Government of Sindh, and respondents to appoint the petitioner against a post reserved for the quota of employees who have been declared invalidated or incapacitated on medical grounds and

subsequently passed away, in terms of Rule 11-A as discussed supra, and the order dated 10.08.2016 passed by the Hon'ble Supreme Court of Pakistan. The aforesaid exercise shall be undertaken by them within one week from the date of receipt of this order. In case of failure, contempt proceedings shall be initiated against the competent authority.

Let a copy of this order be transmitted to the Chief Secretary Sindh and respondents for compliance.

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Nadir*